

OPERATING AND LEASE AGREEMENT

This **OPERATING AND LEASE AGREEMENT** ("Agreement") is made and entered into this 27 day of October, 2010, by and between the **CITY OF TAMPA**, a municipality organized and existing under the laws of the State of Florida, with an address at 315 East Kennedy Boulevard, Tampa, Florida 33602 ("Lessor"), and **THE TAMPA THEATRE, INC.**, a Florida not-for-profit corporation doing business as **TAMPA THEATRE FOUNDATION**, with an address at 711 N. Franklin Street, Tampa, FL 33602 ("Lessee"), collectively referred to as "Parties".

WITNESSETH:

WHEREAS, the Leased Premises (as defined below) is part of a historic landmark property divided into condominium units as provided for in the Declaration of Condominium for Tampa Theatre Building, a Condominium in Hillsborough County, Florida recorded in Official Records Book 19484, Page 552, in the Public Records of Hillsborough County, Florida ("Declaration") which terms and conditions are hereby incorporated herein by reference; and

WHEREAS, in accordance with the terms of that certain Tampa Theatre Agreement dated September 29, 2009 (the "Theatre Agreement"), Lessor provided to Lessee the Two Million and No/100 Dollars (\$2,000,000.00) necessary to acquire the following described property (collectively, the "Theatre Units"): (i) the spaces shown and legally described on Exhibit "A" attached hereto and designated "Unit 1"; (ii) the storefront space, shown and legally described on Exhibit "A" attached hereto and designated "Unit 1A"; (iii) the office space which space is shown and legally described on Exhibit "A" attached hereto and designated "Unit 1B"; and (iv) all of the Foundation's right, title, and interest in and to all hereditaments, easements, appurtenances, rights and privileges related in any way to the Theatre Units and Charitable Donation Property (as defined below) or any portion thereof; and

WHEREAS, in accordance with the terms of the Theatre Agreement, Lessee donated to Lessor the Theatre Units and the Charitable Donation Property; and

WHEREAS, pursuant to the terms of the Theatre Agreement, Lessee donated to Lessor certain property consisting of the following: (i) the theatre marquee; and (ii) the blade sign; (collectively, the "Charitable Donation Property," together with the Theatre Units, the "Leased Premises").

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, including the recitals which are material representations inducing the Parties to enter into this Agreement, and the payment of the sums as provided herein, by the Lessee to the Lessor, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS:** The foregoing recitals are hereby incorporated into the body of this Agreement as if fully rewritten and restated herein.

2. **LEASED PREMISES:** Lessor does hereby lease and let and the Lessee does hereby hire and take the Leased Premises.

3. **AUDITORIUM:** Lessee hereby acknowledges that Lessor possesses a certain leasehold interest in the Tampa Theatre auditorium ("Auditorium," together with the Leased Premises, the "Theatre") pursuant to the terms and conditions of that certain lease by and between George Weeks, joined by Annie M. Weeks, his wife and James F. Glen, unmarried and Consolidated Amusements Inc., dated January 28, 1924 and recorded in Deed Book 424, Page 66 of the Public Records of Hillsborough County, Florida, as assigned to the Lessor by that certain Assignment, Acceptance and Lease Assumption Agreement dated April 30, 1976 and recorded in Official Records Book 3120, Page 880 of the Public Records of Hillsborough County, Florida (collectively, "Auditorium Lease"). Lessee further acknowledges that the Leased Premises shall not be operated in such a manner as to conflict with, interfere, restrict, lessen, or impair Lessor's operation of the Auditorium. In the event there is a conflict between the operation of the Auditorium and the Leased Premises, the operation of the Auditorium shall prevail and take priority of the operation of the Leased Premises.

4. **DECLARATION:** Lessee expressly acknowledges that it shall be bound by and be responsible for all of the obligations, responsibilities, duties, costs, assessments (special and annual), fees and requirements arising out of and relating to the terms, covenants and conditions of the Declaration.

5. **TERM AND RENEWAL:** The initial lease term shall be for a period of fifty (50) years beginning on October 1, 2009 ("Rent Commencement Date") and ending on September 30, 2059 ("Lease Term"). However, in the event that Lessor is unable to extend any portion of its leasehold interest in the Auditorium, this Agreement shall terminate and expire at the same time as any portion of Lessor's leasehold interest in the Auditorium Lease expires or is terminated. Subject to the terms of this Agreement, upon the expiration of the Lease Term, this Agreement shall automatically renew for a term equal to the term of the lease agreement entered into by Lessor for the leasing of the Auditorium. In the event that the Lessor is successful in acquiring exclusive fee interest in the real property of the Auditorium, Lessor may enter into a lease and operating agreement with Lessee for the leasing and operation of the Auditorium.

6. **RENT:** Lessee shall pay to the Lessor (together, the "Rent"): (i) an annual rent of One and No/100 Dollars (\$1.00) per year, along with any sales tax or other tax levied on the rent by any governmental authority, paid in advance beginning on the Rent Commencement Date and continuing on each anniversary of the Rent Commencement Date until the expiration of the Lease Term; and (ii) the monthly rent and any other amounts due from Lessor under the Auditorium Lease. Lessee shall cause to be delivered to Lessor by the first day of each month the Rent at the following address: City of Tampa Accounting, Revenue, & Finance, 315 E. Kennedy Blvd. 2nd Floor, Tampa, Florida 33602. Lessee may pay to Lessor the annual rent of One and No/100 Dollars (\$1.00) in a lump sum payment of Fifty and No/100 Dollars (\$50.00) on the Rent Commencement Date. A lump sum payment shall not relieve Lessee of the responsibility of paying any sales tax or other tax levied on the rent by any governmental authority or any other payments required from Lessee, specifically the monthly rent due under the Auditorium Lease. The Rent shall be deposited into account ND0501104-362010.

7. PURPOSE AND USE: Lessee covenants and agrees as follows:

- a) To use the Leased Premises for the purpose of continuing the Theatre productions, shows and presentations, and to keep the Leased Premises in good operating condition and open to the public; and
- b) To comply at all times with all federal, state and local laws, historic preservation regulations, governmental regulations, ordinances of the City of Tampa or any other governmental entity with regard to the use of the Leased Premises, including without limitation, the City of Tampa's Code of Ethics; and
- c) Not to suffer or permit the Leased Premises or any part thereof, to be used for any purpose not otherwise expressly allowed herein without the prior written consent of Lessor, as determined in Lessor's sole discretion; and
- d) Not to suffer or permit the Leased Premises or any part thereof, to be used for any illegal or immoral purpose.

8. HISTORICAL STRUCTURE: Lessee hereby acknowledges that the Leased Premises are part of a "local historic landmark" listed on the National Register of Historic Places. Lessee further acknowledges Lessor's absolute and unbridled right to do, take or omit any and all acts necessary to retain such status. Should any term of this Agreement be construed in such a fashion as to be in conflict with Lessor's intention to maintain the Leased Premises as a "local historic landmark", such provision shall be modified, or if not possible, avoided, but only to the extent necessary to preserve the Leased Premises as a "local historic landmark." Lessee shall not use, alter, modify, improve or in anyway change the interior or exterior of the Leased Premises in a fashion that alters the Leased Premises' qualification as a historic landmark without the prior written consent of the Lessor.

9. OPERATION STANDARDS: It shall be the Lessee's responsibility to discharge all of the following duties and responsibilities:

- a) Manage, operate and provide all services as may be required to maintain and operate the Leased Premises in an efficient, business-like manner.
- b) Obtain funds for its operating budget from local, state and federal government sources, individual or corporate memberships, sponsorships, grants, rentals and admission charges, merchandise/food/beverage sales, special events and other fundraising and earned income activities.
- c) Establish the day-to-day operating policy, the standards of operation, the quality of service, and all other matters affecting the business of the Theatre and shall pay all costs associated therewith, including but not limited to all personnel and services required for the proper operation of the program services including administration, human relations, development, marketing, public relations, educational programs, curatorial services and exhibitions.

d) Apply for and maintain all licenses and permits required in connection with its operation.

e) Pay all impositions, assessments, taxes and fees required in connection with the operation of the Leased Premises and related programs.

f) Negotiate and consummate arrangements with concessionaires, licensees, tenants, or other intended users of the Leased Premises.

g) Institute in the name of Lessee any and all legal actions or proceedings to collect charges, rent or other income due Lessee, or to dispossess guests, tenants or other persons in possession of the Leased Premises, or to cancel or terminate any lease, license or concession agreement with any tenant, licensee or concessionaire.

h) Operate the food service facility located in the lobby of Unit 1 during all events at the Theatre. This shall include staffing and purchasing, stocking and preparing products for sale. Lessee shall be entitled to all revenue derived from this activity.

i) Lessee shall be responsible for marketing Unit 1A and Unit 1B to tenants, negotiating terms, preparing and executing sub-leases and billing. Lessee shall be entitled to all revenue realized from the rental of Unit 1A and Unit 1B.

j) Maintain its books, accounts receivable listings, fixed asset reports and all other records in accordance with generally accepted accounting principles consistently applied, and permit the Lessor, its officers and employees and any professional designated by the Lessor in writing, at Lessor's expense, to visit and inspect any of its properties, corporate books and financial records, and to discuss its accounts, affairs and finances with Lessee or the principal officers of Lessee, during reasonable business hours, all at such times as the Lessor may reasonably request; provided that no inspection shall materially interfere with the conduct of Lessee's business. At a minimum, before the beginning of each fiscal year, Lessee shall submit to Lessor an accounting of the current fiscal year's revenues and expenses and an estimate of anticipated revenues and expenses for the up-coming year with regard to the Leased Premises and auditorium. Representatives from the Lessee and Lessor shall meet on or before the beginning of each fiscal year to review said accounting.

k) Lessee shall maintain a master book listing all events that are scheduled for the Theatre. Lessee shall be responsible for procuring programs and events to be held at the Theatre. Lessee will primarily book events which enhance the cultural and educational opportunities for the City of Tampa's citizens and visitors. Lessee shall be responsible for all rental policies and procedures consistent with this agreement and with industry standards. Lessee shall be responsible for determining what rents and fees are to be charged for the use of and admission to the Theatre and Lessee shall be entitled to all revenues derived thereby. Lessee shall ensure that all shows and events comply with all safety ordinances, and shall coordinate any use of pyrotechnics, fire, smoke, or other special effects with the City of Tampa Fire Department, including obtaining the

necessary permits and scheduling of fire department personnel required as determined by the City of Tampa Fire Department.

10. LESSOR'S OBLIGATIONS:

a) Lessor shall endeavor to contribute to Lessee a non-departmental operating subsidy, payable quarterly in equal installments at the beginning of each quarter or as shortly thereafter as reasonably practical, subject to the Lessor's annual budget approval process, which is an independent process each year. For the fiscal year 2010, the non-departmental operating subsidy shall total Ninety Seven Thousand Nine Hundred and No/100 Dollars (\$97,900.00). Lessee hereby acknowledges that any financial obligation of the Lessor described in this Agreement is temporary and subject to the availability of funds pursuant to the requirements of Section 166.241, *Florida Statutes*, which makes it unlawful for a municipality "... to contract for expenditures in any fiscal year except in pursuance of budgeted appropriations." Such appropriations are regulated by statute and city charter and are done annually by Lessor. Accordingly, any financial commitments herein are subject to Lessor's annual budget approval process and could be affected by that process as well as any significant budgetary shortfall, whether caused by a recession, depression, terrorist act, natural disaster, catastrophe, or otherwise.

b) In addition to the non-departmental operating subsidy, Lessor may endeavor to budget a departmental operating subsidy for the Leased Premises. For the fiscal year 2010, the departmental operating subsidy shall total One Hundred Thirty One Thousand One Hundred Seven and No/100 Dollars (\$131,107.00). Lessee hereby acknowledges that any financial obligation of the Lessor described in this Agreement is temporary and subject to the availability of funds pursuant to the requirements of Section 166.241, *Florida Statutes*, which makes it unlawful for a municipality "... to contract for expenditures in any fiscal year except in pursuance of budgeted appropriations." Such appropriations are regulated by statute and city charter and are done annually by Lessor. Accordingly, any financial commitments herein are subject to Lessor's annual budget approval process and could be affected by that process as well as any significant budgetary shortfall, whether caused by a recession, depression, terrorist act, natural disaster, catastrophe, or otherwise.

c) For the Lease Term, Lessor may provide facility maintenance and support to the Leased Premises through Lessor's Facilities Management Division in the same manner Lessor currently provides to the Leased Premises. However, Lessee hereby acknowledges that any facility maintenance and support provided by Lessor to the Leased Premises is temporary and is subject to an annual approval process, which shall be an independent process each year. It is the express intent of the parties that Lessee shall, as soon as possible, at its sole cost and expense, assume from Lessor sole responsibility for and provide all repairs and maintenance service on all parts of the Leased Premises, including but not limited to those responsibilities enumerated below.

11. MAINTENANCE AND REPAIRS:

a) Lessee, during the Lease Term, agrees to promptly notify Lessor of the need of the following:

- i. Repairs and maintenance service necessary on all parts of the Leased Premises including all interior, exterior and structural repairs as needed to maintain the Leased Premises in compliance with historical guidelines, including but not limited to, the Secretary of Interior's Standards for Rehabilitation, Guidelines for Rehabilitating Historic Building (revised 1993, with Addendum revised March 1990) and the guidelines established for the Tampa Theatre historical landmark; and
- ii. Maintenance and repairs necessary to maintain all heating, HVAC systems, air conditioning and ventilating systems, electrical and lighting systems, plumbing and waste facilities, and ticket booth in good order, condition and repair; and
- iii. Any janitorial material, supplies and services required to be used on the Leased Premises to adequately maintain the Leased Premises; and
- iv. Any security or related services to provide protection of the Leased Premises; and
- v. Maintenance of the outside areas immediately adjoining the Leased Premises to keep the area clean and free of trash, rubbish and garbage; and
- vi. Maintenance and repairs necessary to maintain the Leased Premises, including all entrances, doors, locks, windows, glass, molding, ceilings, floorings, walls and appurtenances thereto, in good order, condition and repair; and
- vii. Maintenance and repairs necessary to maintain the Auditorium in good order, condition and repair; and
- viii. Maintenance and repairs necessary to maintain the adjoining three story office building rooftops in good order, condition and repair.

12. UTILITIES AND TAXES: So long as the Lessor provides the Lessee with the departmental operating subsidy outlined in Section 10, Lessor shall be responsible for the payment of all bills for all water, sewer, gas, electricity, or any other utilities servicing the Leased Premises. Upon the discontinuation of the departmental operating subsidy by the Lessor, Lessee shall be solely responsible for the payment of all bills for all water, sewer, gas, electricity, or any other utilities servicing the Leased Premises. Lessee shall also provide and use suitable covered receptacles for all garbage, trash, and other refuse on or in connection with the Leased Premises. Lessee shall pay all taxes of any sort and nature, which may be levied or assessed on the Leased Premises as a result of this Agreement or Lessee's activities thereon and any approved improvements made during the term of this Agreement. Lessee further agrees to pay all

licenses, taxes, assessments and other charges levied on the Leased Premises. Lessor shall reasonably cooperate with Lessee's annual effort to apply for the ad valorem tax exemption from the Hillsborough County Property Appraiser.

13. IMPROVEMENTS: Lessee shall apprise the Lessor prior to making any improvements, modifications or alterations of any nature to the Leased Premises that costs less than or equal to Ten Thousand and No/100 Dollars (\$10,000.00). Lessee shall receive the prior written approval of Lessor for any improvements, modifications or alterations of any nature to the Leased Premises that costs greater than to Ten Thousand and No/100 Dollars (\$10,000.00). Any such approval shall not relieve the Lessee of having to obtain the necessary permits as are required by any governmental entity and under no circumstances will any work take place on or in the Leased Premises without such permits. Any damage to the building caused by improvements and/or repair by the Lessee shall be repaired or replaced at the Lessee's sole cost and expense. Any improvements of any kind or nature or items attached to the land or the building during the Term of this Agreement by the efforts of the Lessee shall be considered property of the Lessor.

14. ACCESS: Lessee shall allow Lessor's authorized representative(s) access to the Leased Premises or any portion thereof at all reasonable hours for the purpose of examining and inspecting the Leased Premises or for the purpose necessary, incidental to, or connected with the performance of its obligations hereunder, or in the exercise of its governmental functions.

Lessee shall also allow the Lessor the opportunity to reserve and exclusively use the Theatre for one day each month, with a minimum of one (1) month's notice, at no rental cost to the Lessor ("Lessor's Exclusive Use"). This privilege is non-assignable and non-cumulative. Lessor shall be responsible for any costs and expenses incurred by Lessee as a direct result of Lessor's Exclusive Use, and which are in excess of Lessee's regular day-to-day operating costs of Theatre. Lessor and Lessee shall mutually agree upon the costs and expenses prior to Lessor's Exclusive Use. Without Lessee's prior written consent, Lessor's Exclusive Use may not be held on Friday, Saturday or Sunday, and shall be subject to availability of the Theatre and not conflict with any prior scheduled events at the Theatre.

15. INSURANCE:

a) During the Lease Term, the Lessee shall provide, pay for, and maintain insurance with companies authorized to do business in Florida, with an A.M. Best rating of B+ (or better) Class VI (or higher), or otherwise be acceptable to the Lessor if not rated by A.M. Best. All insurance shall be from responsible companies duly authorized to do business in the State of Florida. All liability policies shall provide that the Lessor is an additional insured as to the operations of the Lessee and also shall provide the Severability of Interest Provision and a waiver of subrogation provision. The minimum limit of coverage shall be One Million and No/100 Dollars (\$1,000,000.00), combined single limit each occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate covering bodily injury, liquor liability, death and property damage. The insurance coverages required herein are to be primary to any insurance carried by Lessor or any self insurance program thereof. The amount of insurance required hereunder may

be reasonably increased not more than once every five (5) years within sixty (60) days from the date that Lessor requests such an increase from Lessee in writing. The insurance coverages and limits required must be evidenced by a properly executed Acord 25 Certificate of Insurance form. Each certificate must be manually signed by the Authorized Representative of the insurance company shown in the certificate with proof that he/she is an authorized representative thereof. Lessee shall also require all subtenants occupying any portion of the Leased Premises to maintain this coverage throughout their tenancy.

b) Thirty days' (30) written notice by must be given to the Lessor of any cancellation, intent not to renew, or reduction in the policy coverage, except in the application of the aggregate liability limits provisions. Should any aggregate limit of liability coverage be reduced, it shall be immediately increased back to the limit required by this Agreement. The Lessee shall be responsible for any deductibles under its policies. The Lessee shall ensure that all of its contractors and subcontractors carry adequate types and limits of insurance.

c) Should at any time the Lessee not maintain the insurance coverage required under this Agreement, the Lessor, at its sole discretion, may purchase such coverage and charge the Lessee for such coverage purchased. The decision of Lessor to purchase such insurance shall in no way be construed as a waiver of Lessor's rights under this section.

d) The acceptance by the Lessor of delivery of any certificate of insurance evidencing the insurance coverage and limits required hereby, does not constitute approval or agreement by the Lessor that the insurance requirements have been met or that the insurance policies shown in the certificate of insurance are in compliance with the requirements herein.

16. APPOINTMENT RIGHTS:

- a) Lessor, through its Mayor, shall have the right, but not the obligation, to appoint one full voting member to Lessee's board of trustees/directors responsible for governance of the Theatre (the "Board"), and such appointee shall serve as a voting member on the Executive Committee (the Board members appointed to make any decisions for the Theatre not otherwise reserved for the full Board) thereof or its equivalent.
- b) Lessor, through its Mayor, shall have the right, but not the obligation, to request an employee of Lessor to attend any of Lessee's finance committee meetings. If this person is different than the Mayor's appointee discussed above, this person shall not have the right to vote at the finance committee meetings.
- c) Lessor's City Council shall have the right, but not the obligation, to appoint one ex-officio member to the Board.

- d) Lessor reserves the right to exercise any and all voting rights granted to Lessor under the terms and conditions of the Declaration. Lessor hereby assigns its right to vote under the Declaration to Lessee, who shall consult with Lessor prior to making any vote affecting the Leased Premises. In the event that the Lessor and Lessee fail to agree upon how to vote, Lessor, in its sole discretion, shall determine how the vote will be cast.

17. INDEMNIFICATION/HOLD HARMLESS: Lessee hereby indemnifies, defends and holds Lessor, and its employees, agents and affiliates, harmless from and against any and all claims, debts, demands, suits or actions arising by reason of or in connection with any alleged act or omission of the Lessee, or any person claiming under, by or through the Lessee, or in any way pertaining to the use of the Leased Premises.

18. ASSIGNMENT AND SUBLEASE: Lessee shall not assign, sublease or otherwise transfer all or any part of the Leased Premises and/or this Agreement without the prior written consent of Lessor, which consent may be determined in Lessor's sole discretion. Lessor shall have the right to transfer and/or assign this Agreement and the Leased Premises, or any part thereof, without the consent of Lessee.

19. EMINENT DOMAIN: If the whole or part of the Leased Premises is taken by any public authority under the power of eminent domain, then the Lease Term shall cease, as to the part so taken, from the day the possession of that part shall be taken for any public purpose. Lessor shall be entitled to all condemnation awards.

20. CASUALTY: During the term of this Agreement, if the Leased Premises or any portion thereof is damaged by fire or other casualty, then Lessee shall, at its sole cost and expense, be responsible for repairing and restoring, back to its historic character, all improvements placed on the Leased Premises. All repairs to the Leased Premises shall be performed promptly and in a good and workmanlike manner. Lessee shall also be solely responsible for the replacement and repair of any personal property or equipment owned by Lessee and located on the Leased Premises.

21. CONDITION OF LEASED PREMISES: Lessee accepts the Leased Premises in "AS IS" condition. Lessor makes no warranty, guarantee, or covenant of any nature whatsoever concerning the condition of the Leased Premises including the physical condition thereof, or any condition which may affect the Leased Premises, and it is agreed that the Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

22. EVENTS OF DEFAULT:

a) **Lessee's Default.** Lessee shall be in default under this Agreement if Lessee shall violate or fail to comply with or perform any of the terms, conditions or agreements to be performed or observed by Lessee under this Agreement, within thirty (30) days after written notice from Lessor.

b) **Lessor's Default.** Lessor shall be in default under this Agreement if Lessor shall violate or fail to comply with or perform any of the terms, conditions or agreements to be performed or observed by Lessor under this Agreement within thirty (30) days after written notice from Lessee or such additional time as shall be necessary in the event such violation cannot be cured within such thirty (30) day period and thereafter proceeds continuously and diligently to complete such cure.

23. EFFECTS OF DEFAULT:

a) If at any time an event of default shall occur and such event of default has not been cured within any applicable cure period of this Agreement, the non-breaching party, upon its election, may declare the Lease Term ended.

b) In the event of Lessee's default, Lessor may re-enter upon the Leased Premises and the improvements situated thereon, or any part thereof or thereon, either with or without process of law, the Lessee waiving any demand for possession of such Leased Premises and any and all permanent improvements then situated thereon or the Lessor may have such other remedy as the law or this instrument may afford.

c) Upon the termination of this Agreement, at such election of the Lessor, or in any other way, the Lessee shall immediately surrender and deliver up the Leased Premises and permanent improvements peaceably to the Lessor. At such time the title to any and all improvements placed on the Leased Premises by the Lessee shall revert to or become the exclusive property of the Lessor except for office equipment and personal property owned by Lessee. If the Lessee shall hold such Leased Premises, or any part thereof, one day after the termination date it shall be subject to eviction or removal in accordance with law. Any damage which may occur to the Leased Premises due to Lessee's removal of its equipment and/or personal property shall be repaired by the Lessee at its expense and to the Lessor's satisfaction.

d) Nothing contained herein shall be construed as precluding the Lessor from having such remedy as may be and become necessary in order to preserve the Lessor's rights in the Leased Premises and in this Agreement, even before the expiration of the grace or notice periods provided for in this Agreement if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the Lessor in this Agreement and in the Leased Premises.

e) Under no circumstances shall Lessee be entitled to compensation from Lessor for any permanent improvements made by Lessee to the Leased Premises including, without limitation Lessee's Improvements.

24. GRACE PERIODS: All default and grace periods shall be deemed to run concurrently and not consecutively.

25. BANKRUPTCY: It is expressly understood and agreed that in the event the Lessee enters into bankruptcy proceedings, is adjudged bankrupt or insolvent, or makes an assignment for the benefit of creditors, or if a receiver or trustee of the Lessee's creditors is filed, then in any such event, the Lessor may, at its option and without notice, declare this Agreement ended and terminated and may re-enter the Leased Premises and take possession thereof.

26. ATTORNEY'S FEES: In connection with any legal proceedings relating to or arising out of this Agreement, including appellate proceedings, or for any action for possession of the Leased Premises or damages, or for the collection of any rent or any other payment required that may be collected by suit, the prevailing party shall be entitled to recover all costs and reasonable attorneys' and other professional fees incurred by such prevailing party for any litigation, mediation or appeal whether litigated or settled.

27. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

28. SUCCESSORS IN INTEREST: Unless otherwise provided in this Agreement, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

29. NON-DISCRIMINATION:

a) Neither party shall discriminate against any individual because of that individual's race, color, religion, sex, sexual orientation, age, national origin, disability, handicap, marital status, or familial status with respect to any activity occurring on or in the Leased Premises or within the area subject to this Agreement.

b) In the construction of any improvements on, over or under said Leased Premises and the furnishing of services thereon, Lessee shall not discriminate against any person on the grounds of race, color, sex or national origin. In addition, in obtaining the materials, supplies, equipment, and services necessary for the design, construction, and operation of any improvements or buildings described in this Agreement, Lessee shall comply with the ordinances and policies of Hillsborough County, Florida regarding women and minority business enterprises, equal employment opportunity and affirmative action.

30. HOLDING-OVER: In the event Lessee shall holdover and remain in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall create a tenancy from month to month which may be terminated at any time by the Lessor.

31. **SURRENDER:** Upon expiration of the Lease Term or early termination of this Agreement, the Lessee will peaceably and quietly deliver possession of the Leased Premises and all permanent improvements which the Lessee may have constructed upon the Leased Premises pursuant to the provisions of this Agreement. At that time the title to any and all permanent improvements placed on the Leased Premises by the Lessee shall revert to and become the exclusive property of the Lessor except for equipment and personal property owned by the Lessee. Any damage which may occur to the Leased Premises due to Lessee's removal of equipment and/or personal property shall be repaired by the Lessee at its sole cost and expense and to the Lessor's reasonable satisfaction.

32. **PROHIBITION AGAINST ENCUMBRANCES:**

a) Lessee shall defend and hold harmless the Lessor from any claim or demand including attorneys' fees on the part of any person, firm or corporation, performing labor or furnishing materials in connection with the building and construction and any improvements on the Leased Premises; and

b) Lessee shall not engage in any financing or any other transaction, creating any mortgages, mechanic's or materialman's liens, or any other encumbrances or liens or claims of any kind upon Lessor's fee interest in the Leased Premises or any portion of the Leased Premises or other land owned by Lessor; and

c) It is distinctly understood and agreed that any person, firm or corporation furnishing materials or performing labor on behalf of Lessee on any buildings or improvements on the Leased Premises shall look only to the Lessee for any payment, and that no lien or claim shall be allowed to attach to Lessor's fee interest in the Leased Premises or Lessor's fee interest in any other portion of the Leased Premises. In the event that the Lessee shall fail and refuse to pay and discharge any amount of money that may be due for materials furnished or labor performed in connection with the construction of improvements on the Leased Premises, and such default shall have continued for a period of thirty (30) days after the Lessor shall have given the Lessee notice of such default, the Lessor may, at its option, declare this Agreement terminated, provided, however, Lessee shall have the right during said thirty (30) day period, in accordance with Florida Statutes to post a surety bond with the Clerk of the Circuit Court in and for Hillsborough County, Florida, and have any such lien transferred to said bond and said action by Lessee shall cure the default and the Lessor shall have no right of termination. Upon the termination of this Agreement by reason of such default, all permanent improvements (except as otherwise provided herein) placed upon the Leased Premises by the Lessee shall be and become the property of the Lessor, and the Lessee shall have no further right, title or interest therein, and the Lessor shall have the full right, power and authority to enter upon the Leased Premises and take possession of the same and all buildings, improvements or other structures thereon.

d) It is further understood by the Lessee that it may only use the leasehold as security for any proposed financing and that Lessee has no ownership rights or title to the Leased Premises. Further, such leasehold interest is strictly conditioned upon the satisfaction of all terms and provisions contained herein.

33. SPECIAL CONDITIONS: In connection with this Agreement, Lessor and Lessee expressly acknowledge and agree the Leased Premises is listed on the National Historic Register. Therefore, the use of the Leased Premises shall at all times comply with all terms and conditions of The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and all applicable rules and regulations imposed by City of Tampa's Architectural Review and Historic Preservation Commissions in connection with the Leased Premises.

34. TIME IS OF THE ESSENCE: As to the payment of rent and the performance by Lessee of the requirements, conditions and covenants of this Agreement, time is of the essence.

35. CHOICE OF LAW: This Agreement shall be interpreted and construed under the laws of the State of Florida. Venue shall be in Hillsborough County, Florida.

36. NOTICES: Any notice shall be in writing and shall be delivered by hand with acknowledgement of receipt or sent by United States Registered or Certified Mail; postage prepaid, addressed as follows:

TO LESSOR:

City of Tampa
306 E. Jackson Street
3rd Floor
Tampa, Florida 33602
Attn: Real Estate Manager

TO LESSEE:

Tampa Theatre, Inc.
711 N. Franklin Street
Tampa, FL 33602
Attn: Chief Executive Officer

37. WAIVERS: In the event that the Lessor at any time shall waive any default by Lessee of any of the covenants and conditions of this Agreement, then such waiver shall not be construed to be a continuing waiver of such default and shall not be construed as a waiver of any subsequent default that may be committed by Lessee.

38. HEADINGS: The headings used for the paragraphs of this Agreement are for ease of reference only and are not to be construed as adding to or detracting from the meaning contained therein.

39. RADON GAS NOTIFICATION: "RADON GAS": Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from your county public health unit.

40. HAZARDOUS SUBSTANCES: Lessor has no knowledge of but makes no representation or warranty regarding the existence or disposal of any substance, chemical, material, or waste on the Leased Premises that is or are identified as hazardous, toxic or dangerous under any applicable federal, state or local regulation (collectively "Substances").

Lessee shall not introduce or use any such Substances on the Leased Premises in violation of any applicable law.

41. INJURIES AND LOSS: Lessor shall not be liable for any injury or damage to persons or property caused by or resulting from steam, electricity, gas, water, or from any injury or damage resulting or arising from any other cause or happening whatsoever not due to the sole negligence of the Lessor, its agents, servants, or employees.

42. SIGNS, ADVERTISEMENTS AND DECORATIONS: Lessee shall not name the Leased Premises building or any exterior portion thereof without the prior written consent and approval of the Lessor acting by and through its Mayor. It is hereby expressly acknowledged that Lessee shall be able to name the interior of the Leased Premises and any part thereof, without the consent of Lessor. Lessor shall not formally name any improvements located on the interior Leased Premises without the prior written consent of Lessee, which consent shall not be unreasonably withheld or delayed.

43. NET LEASE: This Agreement is a "triple-net lease" and all Rent shall be absolutely net to Lessor. Except as provided herein, all costs, expenses, and obligations of every kind or nature, whatsoever, relating to the Leased Premises, which may arise or become due during the term of this Agreement, shall be paid by the Lessee, and the Lessor shall be indemnified and held harmless, to the extent allowed by law, by the Lessee from and against the same.

44. QUIET ENJOYMENT: Upon Lessee's compliance with the terms and conditions hereof, Lessor covenants and agrees that Lessee may peacefully and quietly enjoy the Leased Premises.

45. ENTIRE AGREEMENT: This instrument constitutes the entire Agreement between the Lessor and the Lessee, and it shall not be amended, altered, or changed except by a written agreement executed by the parties hereto.

46. COUNTERPARTS: This Agreement may be executed in any number of identical counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all counterparts hereof taken together shall constitute but a single instrument. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine shall be treated as an original document, the signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document.

47. TERMINATION. In the event that the Lessor and Lessee mutually agree that the termination of this Agreement is necessary for the Theatre to be eligible for additional financial support, then this Agreement may be terminated effective immediately upon the simultaneous execution of a new lease and operating agreement for the Theatre between Lessor and an entity controlled or managed by Lessee. Such permission to terminate this agreement and institute a new agreement or agreements will not be unreasonably withheld by Lessor.

[SIGNATURE PAGE FOLLOWS]

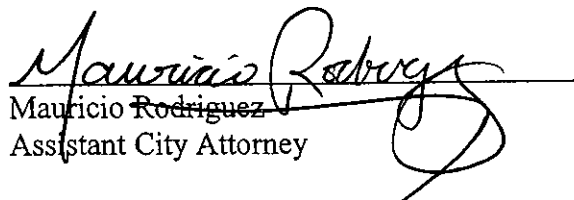
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Signed, sealed and delivered
in the presence of:

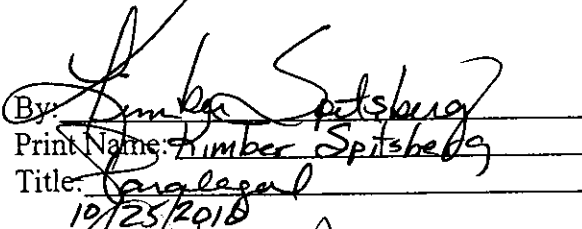
By: _____
Print Name: _____
Title: _____

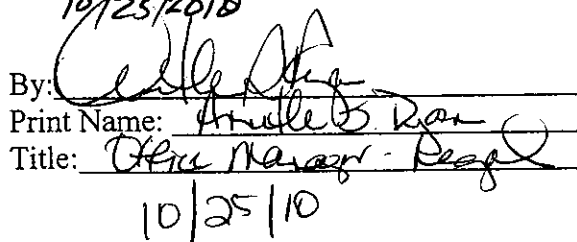
By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

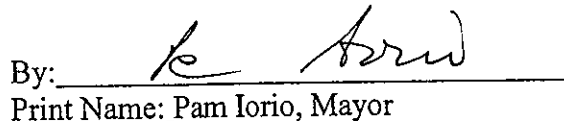

Mauricio Rodriguez
Assistant City Attorney

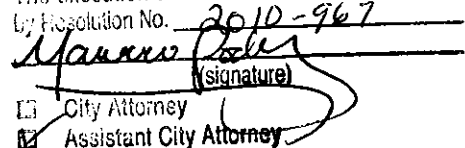
Signed, sealed and delivered
in the presence of:

By: 
Print Name: Kimber Spitzberg
Title: paralegal
10/25/2010

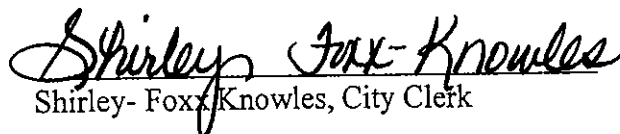
By: 
Print Name: Annelle B. Rios
Title: Office Manager - People
10/25/10

LESSOR:
CITY OF TAMPA

By: 
Print Name: Pam Iorio, Mayor

The execution of this document was authorized
by Resolution No. 2010-967

(signature)
☐ City Attorney
☒ Assistant City Attorney

ATTEST:


Shirley- Fox-Knowles, City Clerk

LESSEE:
THE TAMPA THEATRE, INC.

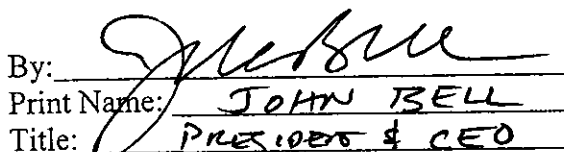
By: 
Print Name: JOHN BELL
Title: PRESIDENT & CEO

EXHIBIT "A"

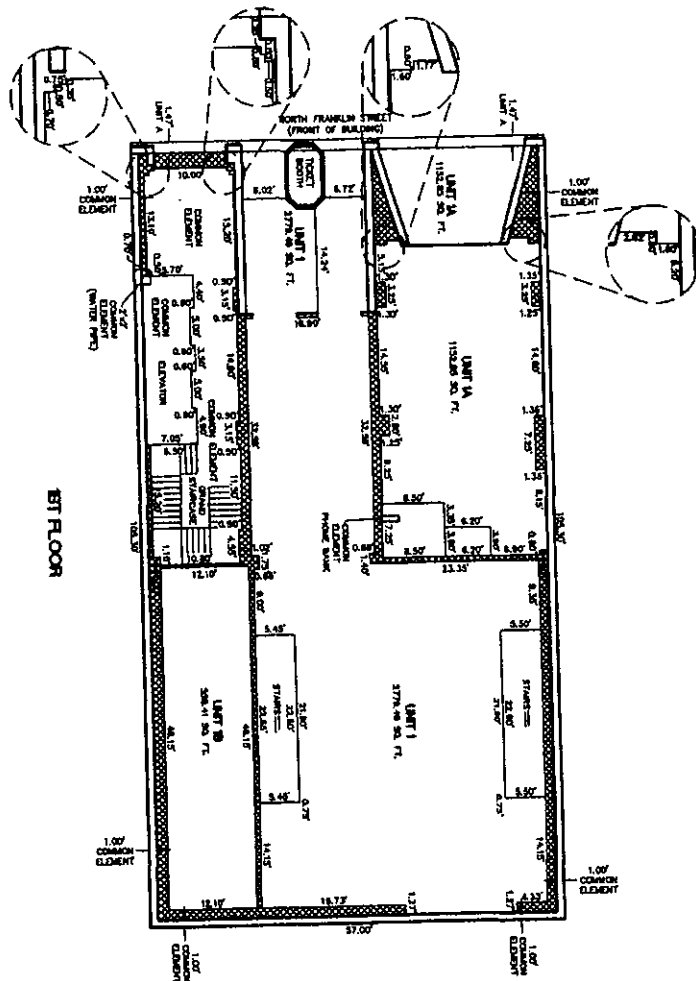
DESCRIPTION OF LEASED PREMISES

See Attached

THIS IS NOT A
CERTIFIED COPY

DECLARATION OF CONDOMINIUM
TAMPA THEATRE BUILDING, A CONDOMINIUM
A PORTION OF SECTION 24, TOWNSHIP 19 SOUTH, RANGE 28 EAST
CITY OF TAMPA, HILLSBOROUGH COUNTY, FLORIDA

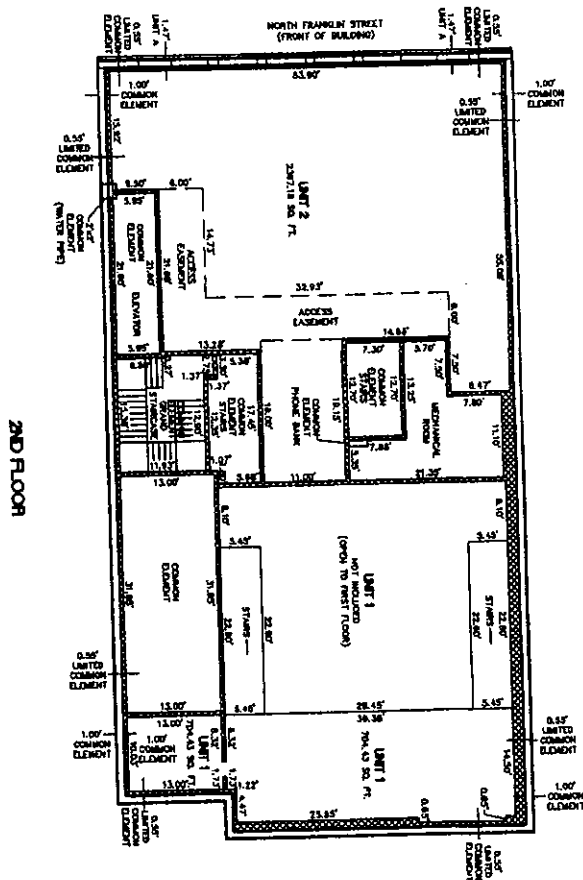
CONDOMINIUM BOOK PAGE



PREPARED BY:
ONE CONSULTANTS OF FLORIDA, INC.
7701 NORTH DALE MARY HWY.
TAMPA, FLORIDA 33614
LICENSED BUSINESS #4638
DATE: 06/10/00
PHONE: (813) 831-8800
FAX: (813) 831-8848
Consolidated of Florida, Inc.

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10	91-100



ENR

PREPARED BY:
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